

### **REMARKS**

In response to the Office Action January 19, 2011, Applicants respectfully request reconsideration. Prior to entry of this Response, claims 2 and 4-10 were pending for examination, with claim 4 being independent claim. In this paper, no amendments have been made. Reconsideration and withdrawal of the rejection of claim 4 and claims dependent therefrom are respectfully requested for the reasons provided below.

#### **Claim Rejections under 35 U.S.C. §103**

Claims 2 and 4-10 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Pelka (WO 01/07828) in view of Schellhorn et al. (US 4907044), and in further view of Lang (US 4714983) (for claim 8) and Burrows (US 4181925) (for claim 9).

The Office Action, once again, acknowledges that Pelka fails to teach or disclose both the LED element and the lens body extending through the cover plate. However, the Office Action states that “Schellhorn teaches an LED light source C having a lens E that extends through a bottom surface of a cover plate (R, Fig 2)”. Applicants respectfully disagree.

Schellhorn, just like Takato (cited in the Office Action of July 12, 2010), teaches conventional "showerhead" light source, wherein LED itself emit light through aperture in a reflective surface. However, as would be readily recognized by skilled artisans, Schellhorn is silent about the lens bodies extending through a cover plate, as recited in claim 4. This is because the light source in Schellhorn is primary optics that is a part of the LED itself, e.g., an optical structure disposed over a semiconductor die (Figs. 4-8). In fact, Schellhorn discloses that “[t]he structure of an optical emission device 0 with an emitter semiconductor chip C, including a cover having a concave lens A and a convex lens E which surrounds the concave lens A. Manufacturing the optical emission device 0 can be accomplished using substantially the same concepts used in manufacturing standard LEDs” (Col. 2, lines 47-54).

In contrast with the device of Schellhorn, the lens body recited in claim 4 is secondary optics, i.e., designed to further manipulate the light emitted by the claimed LED element. Applicants would like to point out that, again, as Examiner surely appreciates, according to the rules of claim interpretation, when claim positively recites two elements, the elements are distinct and cannot be merged into one element, even if the claim is to be interpreted broadly. Thus, the

LED element (including its primary optics) and the lens body (*additional* secondary optics) are two distinct elements of the claim 4.

Hence, Schellhorn does not teach or suggest the lens body extending through a cover plate, as recited in claim 4, and the concept of inserting light sources disclosed by Schellhorn combined with the teaching of Pelka, as proposed in the Office action, would not result in the invention claimed by Applicant. This does not come as a surprise, because none of cited references recognizes the problem addressed by the claimed invention, i.e., to provide a slim flat luminaire, achieving homogeneous light distribution. However, Applicants recognized and appreciated that above stated problem can be solved by the structure recited in claim 4.

Furthermore, MPEP § 2143 states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation* of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be *made explicit*”

Here, the Office Action states that “[o]ne would have been motivated to make this combinations [teaching of Pelka and Schellhorn] where it is desired to provide LEDs and related optics that avoid creating hot spots (col 2, ln 66+) and that can achieve a maximum size solid angle”. However, the Office Action fails to *explicitly articulate*, how two devices with different lighting patterns will prompt skilled artisan to protrude optics of Pelka through a reflective surface of Schellhorn, without *impermissible hindsight* gleaned from applicant’s disclosure. Moreover, Schellhorn explicitly discloses that “[i]n [the disclosed] configuration, the radiation in the axial direction of the emission device is reduced to 20% and simultaneously distributed over a solid angle from 60 degrees to 120 degrees with a maximum of the radiation at 80 degrees” (col. 1, lines 61-66). This optical pattern is very far from homogeneous distribution. Furthermore, since the problem had not been previously known and recognized in the cited art, there would have *been no reason* to combine the teachings of the cited references to solve this problem.<sup>1</sup> Therefore, for at least these reasons, claim 4 patentably distinguish over prior art of record and is allowable. Reconsideration and withdrawal of the rejection of claim 1 is therefore respectfully requested.

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<sup>1</sup> See *i In re Omeprazole Patent Litigation*, 536 F.3d 1361 (Fed. Cir. 2008)

Dependent claims 2 and 5 - 10

Since each of the dependent claims depends from a base claim that is believed to be in condition for allowance, Applicants believe that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicants do not, however, necessarily concur with the interpretation of any dependent claim as set forth in the Office Action, nor do Applicants concur that the basis for the rejection of any dependent claim is proper. Therefore, Applicants reserve the right to further address the patentability of the dependent claims in the future, if deemed necessary.

**CONCLUSION**

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes that the application is not in condition for allowance, the Examiner is requested to call the Applicants' representative at the telephone number indicated below to discuss any outstanding issues relating to the allowability of the application.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is an additional fee occasioned by this response, please charge any deficiency to Deposit Account No. 141270.

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